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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 10/800,374 | 03/12/2004 | Anthony Argila | ARGILA-CELL WEEP-240101 | 8878 |
| 4988 | 7590 | 01/10/2007 | | |
| ALFRED M. WALKER 225 OLD COUNTRY ROAD MELVILLE, NY 11747-2712 | | | EXAMINER DEVOTI, PAUL D | |
| | | | ART UNIT | PAPER NUMBER |

3637

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/10/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/800,374 | Applicant(s) ARGILA, ANTHONY | |
| | Examiner Paul Devoti | Art Unit 3637 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it is greater than 150 words.
Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3. Claims 1, 11, 22, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claim 1, the phrase "such as" (in line 9 of the claim) renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

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5. Regarding claim 11, the phrase "such as" (in line 8 of the claim) renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
6. Claim 22 recites the limitation "the weep hole" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10, 22-39, are rejected under 35 U.S.C. 102(b) as being anticipated by Sourlis (US 5343661).
9. Regarding claims 1-2, 4, 6-8, 22, 27-28, 31-32, 35-37, Sourlis discloses a device with a plurality of upwardly extending water-permeable bodies (28), having a plurality of passages through which water is inherently capable of passing (column 3, lines 11-13). Each upwardly extending water-permeable body (28) has a given height, and a transverse cross section which decreases upwardly from a lower transverse cross section (as seen in Figures 5-7). This forms a pyramidal shape which is tapered upwardly. The weep hole channels, water, mortar droppings and debris, and wythe wall

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comprising masonry elements with cells and recesses of claims are all intended uses and not given any patentable weight.

10. Regarding claims 3, 5, sections of the water permeable body (28) as seen in Figure 5 have truncated conical shapes.

11. Regarding claims 9-10, 29-30, 33-34, 38-39, each body (28) is fibrous (column 5, lines 27-30) and would inherently have a texture on its surface.

12. Regarding claims 23-24, the upwardly extending bodies (28) act as a block inherently capable of collecting mortar and other debris.

13. Regarding claim 25, each upwardly extending body (28) has a circular cylindrical portion (60) as seen in Figure 7.

14. Regarding claim 26, each upwardly extending body (28) has a geometric shape in cross-section.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 11-21, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sourlis (US 6912820) in view of Sourlis (US 5343661).

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17. Regarding claims 11-18, Sourlis ('820) discloses a single wythe wall (22) comprising a plurality of structural elements (26) placed over one another and each forming at least one inner hollow cell (36), at least one drainage weep hole channel, and a device (74) of a given height for draining water from each hollow cell. The device includes a plurality of upwardly extending water-permeable bodies (74), each having a plurality of passages through which water is capable of flowing. Each upwardly extending body (74) is inserted into a corresponding hollow cell (36). Sourlis ('820) does not disclose the device (74) has a transverse cross section which decreases upwardly from a lower transverse cross section. Sourlis ('661), however, discloses a device with a plurality of upwardly extending water-permeable bodies (28), having a plurality of passages through which water is inherently capable of passing (column 3, lines 11-13). Each upwardly extending water-permeable body (28) has a given height, and a transverse cross section which decreases upwardly from a lower transverse cross section (as seen in Figures 5-7). This forms a pyramidal shape which is tapered upwardly. Sections of the water permeable body (28) as seen in Figure 5 have truncated conical shapes. Each upwardly extending body (28) has a circular cylindrical portion (60) as seen in Figure 7. It would have been obvious to one having ordinary skill in the art at the time of invention to modify Sourlis' ('820) device to have a transverse cross section which decreases upwardly from a lower transverse cross section as taught by Sourlis ('661), as this would allow the device to better fit within a cell of a concrete masonry unit.

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18. Regarding claims 19-20, Sourlis (US 6912820) in view of Sourlis (US 5343661) discloses everything previously mentioned, including that each device (74) is fibrous (column 4, lines 62-64 and column 5, lines 33-35). The surface of each device (74) would obviously have a texture.

19. Regarding claim 21, Sourlis (US 6912820) in view of Sourlis (US 5343661) discloses everything previously mentioned, including all of the structural limitations of the claim, and the method as recited in claim 21 would be an obvious method of using the drainage device of Sourlis ('820) in view of Sourlis ('661)

Conclusion

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PD



01/08/07

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